

**OFFICE OF SPECIAL MASTERS**

**No. 04-1382V**

**Filed: May 22, 2006**

LORI EVANS, parent of,  
VICTORIA EVANS, a minor

Petitioner,

v.

SECRETARY OF HEALTH AND HUMAN  
SERVICES,

Respondent.

Hepatitis B; juvenile diabetes (IDDM);  
Failure to Prosecute

**DECISION<sup>1</sup>**

**Vowell**, Special Master

On August 26, 2004, Lori Evans, mother of Victoria Evans, filed a petition under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*, (“the Program”) alleging that Victoria suffered from diabetes caused by the administration of vaccines containing thimerosal. None of the statutorily-mandated supporting documents were filed with the petition.<sup>2</sup>

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, petitioner has 14 days to identify and move to delete such information prior to the document’s disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

<sup>2</sup> See 42 U.S.C. § 300aa-11(c), requiring petitioners to file, *inter alia*, an affidavit, medical records, vaccination records, test results, and medication records with the petition for compensation unless petitioners can identify the records and provide reasons for their unavailability.

The case was assigned to Special Master Laura Millman and, at petitioner's request, further proceedings were stayed pending the outcome of discovery in the Autism Omnibus Proceedings. *See* Order, dated September 28, 2004.

On November 23, 2004, respondent challenged the Special Master's decision to stay the case and asked her to reconsider and to order petitioner to show cause why her claim should not be dismissed for failure to substantiate. An order directing petitioner to respond to the motion to show cause was issued on December 6, 2004. Petitioner responded, and Special Master Millman subsequently denied respondent's motion. Respondent requested reconsideration on March 2, 2005; Special Master Millman directed a response by petitioner, and that response was filed on March 25, 2005. Respondent filed a reply brief on April 4, 2005.

Special Master Millman ordered petitioner to file vaccination and medical records "as soon as possible" but otherwise continued the stay until discovery in the Autism Omnibus Proceedings concluded. *See* Order, dated April 7, 2005. No records of any kind were ever filed.

The case was reassigned to the undersigned special master on February 21, 2006. After review of the file, I issued a second order to petitioner to file vaccination and medical records, directing that they be filed by April 24, 2006. *See* Order, dated March 31, 2006. On May 8, 2006, petitioner's counsel provided a status report indicating that he had made numerous requests to petitioner to obtain the vaccine and medical records. He further indicated that he had provided petitioner, by certified mail, a copy of the court's order of March 31, 2006, and that she had signed for the letter on April 11, 2006. In a status conference held on May 12, 2006, petitioner's counsel indicated that he had received no further contact from his client. Respondent's counsel made an oral motion to dismiss this case; petitioner's counsel did not oppose the motion.

In order to prevail under the Program, petitioner must prove either a "Table Injury"<sup>3</sup> or that a vaccine listed on the Table was the cause in fact of an injury. To satisfy her burden of proving causation in fact, petitioner must offer "proof of a logical sequence of cause and effect showing that the vaccination was the reason for the injury. A medical or scientific explanation must support this logical sequence of cause and effect." *Grant v. Sec'y of Health and Human Servs.*, 956 F.2d 1144, 1148 (Fed. Cir. 1992); *see also Capizzano v. Sec'y of Health and Human Servs.*, 440 F.3d 1317, 1322 (Fed. Cir. 2006); *Althen v. Sec'y of Health and Human Servs.*, 418 F. 3d 1274, 1278 (Fed. Cir. 2005); *Agarwsal v. Sec'y of Health and Human Servs.*, 33 Fed. Cl. 482, 487 (1995).

Without vaccination records, petitioner cannot establish the threshold statutory requirement that she received a vaccine set forth in the Vaccine Injury Table. Without medical records, she cannot establish that she suffered from any illness, disability, injury, or condition for more than 6 months after the administration of the vaccine.

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<sup>3</sup> A "Table Injury" is an injury listed on the Vaccine Injury Table, 42 U.S.C. § 300aa-14, corresponding to the vaccine received within the time frame specified. The varicella and DTaP vaccines are included on the Vaccine Table, but petitioner's condition is not one of the injuries listed for either vaccine.

Petitioner has been provided ample opportunity to cure the defects in the petition she filed over twenty months ago. In view of her failure to comply with two orders of this court to substantiate her petition for compensation, said petition for compensation is DENIED. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance with this decision.<sup>4</sup>

**IT IS SO ORDERED.**

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Denise K. Vowell  
Special Master

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<sup>4</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.